liable to a penalty. *Held*, that the provision is not unconstitutional. *National Safe Deposit Co.* v. *Stead*, 95 N. E. 973 (Ill.).

The statute was objected to as impairing the obligation of the company's charter, as depriving it of liberty and property without due process of law, as subjecting the property to unreasonable searches and seizures, and as devoting the property, by delaying its delivery, to a public use without just compensation. On the death of the depositor the company would seem to hold the property as a bailee for the state and other parties entitled, as tenants in common, since an inheritance tax statute vests a property right in the state at the death of the decedent. *In re Estate of Graves*, 242 Ill. 212, 89 N. E. 978; *Estate of Stanford*, 126 Cal. 112. The view taken by the court, therefore, that the effect of the statute was merely to require a bailee to give notice to a part owner to be present at the distribution of the bailed property and to deliver to such owner his proportionate share, would seem to be justifiable, and renders all the objections taken invalid. The case is but an instance of the right of the state in certain cases for convenience and greater certainty to collect a tax by indirection through a third party. *Commonwealth* v. *D. & H. Canal Co.*, 150 Pa. St. 245, 24 Atl. 599. See *Monticello Distilling Co.* v. *Mayor, etc. of Baltimore*, 90 Md. 416, 427, 45 Atl. 210, 212.

CONTRACTS — SUITS BY THIRD PERSONS NOT PARTIES TO CONTRACT — CONTRACT WITH CITY TO ANSWER FOR DAMAGES TO PROPERTY OWNERS. — Property abutting on the route of a subway was damaged because of the improper methods of construction employed by a sub-contractor. The original contractor had contracted with the city to be answerable for such damages. *Held*, that the city is not, and the original contractor is, liable in damages to the owner of the abutting property. *Smyth* v. *City of New York*, 203 N. Y. 106.

This case extends somewhat the doctrine of *Lawrence* v. *Fox*, 20 N. Y. 268. Hitherto, in New York, the beneficiary could, in general, sue upon the contract only when he was owed some duty by the promisee. *Durnherr* v. *Rau*, 135 N. Y. 219. An exception was made when the defendant had violated the terms of its public franchise. *Pond* v. *New Rochelle Water Co.*, 183 N. Y. 330. Also the beneficiary might sue if the defendant had been negligent while performing a contract to fulfil a function of the state. *Robinson* v. *Chamberlain*, 34 N. Y. 389. In these cases there could have been a recovery apart from the contract, either on the public service law, or for personal negligence. In the principal case there was no liability except upon the contract. A majority of the jurisdictions in this country follow *Lawrence* v. *Fox*, but of these, only New York and Minnesota deny recovery to a "sole beneficiary." *Durnherr* v. *Rau*, *supra*; *Jefferson* v. *Asch*, 53 Minn. 446. Courts allowing recovery by the "sole beneficiary" attain the correct result, but as the doctrine of permitting the third party to sue at law upon such a contract is wrong in principle, the conclusion is reached in an improper way. See 15 HARV. L. REV. 767, 772–775, 780–785.

CONTRACTS — SUITS BY THIRD PERSONS NOT PARTIES TO CONTRACT — SUIT IN EQUITY BY CREDITOR OF PROMISEE. — A. conveyed assets to B. in return for B.'s promise to pay the debts of A. B. conveyed the same assets to C. in return for C.'s promise to pay the same debts. *Held*, that a creditor of A. can recover from C. in equity. *Forbes* v. *Thorpe*, 95 N. E. 955 (Mass.).

In Massachusetts a creditor cannot sue at law on a contract made for his benefit by the debtor. *Morril* v. *Lane*, 136 Mass. 93; *Borden* v. *Boardman*, 157 Mass. 410, 32 N. E. 469. So rigidly has this rule been observed, that of all the American jurisdictions, including those which ordinarily deny the creditor a right of action, Massachusetts alone refuses to allow a mortgagee to proceed against a grantee who has assumed the mortgage debt. *Mellen* v. *Whipple*,

1 Gray (Mass.) 317; *Keller* v. *Ashford*, 133 U. S. 610. See *Woodcock* v. *Bostic*, 118 N. C. 822, 828, 24 S. E. 362, 363. Although the actual decisions go only so far as to hold that the mortgagee has no right at law, there have been judicial utterances which seem to indicate that no action would lie even in equity. See *Rice* v. *Sanders*, 152 Mass. 108, 113. *A fortiori*, in the ordinary case, it would seem, equity would not act. The present case, therefore, in recognizing and assigning as one ground of the decision a right in the creditor to enforce in equity the promisee's right to compel performance by the defendant of the agreement made for the creditor's benefit, apparently marks a decided change in the attitude of this court. The change is all the more welcome since it places the law pertaining to this subject on a basis which is theoretically justifiable. See 15 HARV. L. REV. 767, 775 *et seq.*

CORPORATIONS — STOCKHOLDERS: INDIVIDUAL LIABILITY TO CORPORATION AND CREDITORS — RELEASE OF SUBSCRIBER TO CAPITAL STOCK. — Under a statute providing for the absolute liability of stockholders for the debts incurred by a corporation, while they were stockholders, a corporation released certain subscribers to its capital stock and later incurred a debt. *Held*, that the creditor cannot reach these subscribers. *Thomas* v. *Wentworth Hotel Co.*, 117 Pac. 1041 (Cal.). See NOTES, p. 278.

CORPORATIONS — STOCKHOLDERS: POWERS OF MAJORITY — VALIDITY OF ELECTION AFTER QUORUM BROKEN BY WITHDRAWAL OF STOCKHOLDERS. — After the annual meeting of the stockholders of a corporation had been duly organized, some stockholders without justification withdrew to break the quorum. Those remaining elected the defendants to office. *Held*, that the election is valid. *Commonwealth ex rel. Sheip* v. *Vandegrift*, 81 Atl. 153 (Pa.).

When stockholders withdraw from a regularly organized meeting, and organize another meeting for the election of officers, the election is invalid, even though a majority of the stock is represented. *Commonwealth ex rel. Langdon* v. *Patterson*, 158 Pa. St. 476, 27 Atl. 998. But see *In re Cedar Grove Cemetery Co.*, 61 N. J. L. 422, 39 Atl. 1024. But the question in the principal case is as to the validity of the proceedings of the remaining minority in the original meeting. A quorum is necessary to the legal organization of a meeting; but when the meeting is organized, in the absence of statutory requirement, a majority of the votes cast will elect. See *In re Argus Printing Co.*, 1 N. D. 434, 48 N. W. 347. Those who do not vote are bound by the action of those who do. *State ex rel. Martin* v. *Chute*, 34 Minn. 135, 24 N. W. 353. It would seem that those who withdraw should be in no better position to attack the proceedings than those who are present and do not vote. Every stockholder's right is protected by the requirement that the meeting be conducted in a parliamentary manner. See *Procter Coal Co.* v. *Finley*, 98 Ky. 405, 33 S. W. 188. The decision in the present case seems sound. Under any other rule important corporate action might be indefinitely delayed by a faction of the stockholders.

EQUITY — JURISDICTION — DISCRETION OF COURT IN GRANTING RELIEF. — The plaintiff's agent purported to sell the plaintiff's land as his own to the defendants. He later represented to the plaintiff that he had sold it to another, but paid over part of the money received from the defendants. The plaintiff brought a bill to quiet title. *Held*, that if the defendants will pay the balance of the purchase price which the plaintiff believed to be due him, the plaintiff should convey to them. *Haswell* v. *Standring*, 132 N. W. 417 (Ia.).

In order to achieve an equitable result the court has fastened on the plaintiff a bargain which he has not made. Such action is open to two objections. It denies the plaintiff the right to make his own bargain and in so far does him injustice, and further it destroys all certainty in the settlement of disputes.